

THE PUBLIC SERVICE COMMISSION: A BRIEF OVERVIEW

I. INTRODUCTION - This presentation will:

- A. Describe the PSC and its organization.
- B. Describe the PSC's jurisdiction and regulatory powers .
- C. Provide an overview of rate making.

II. PUBLIC SERVICE COMMISSION

A. Generally

- 1. KRS 278.040(1) describes PSC as a body corporate with the power to sue and be sued in its corporate name.
- 2. KRS 278.040(2) provides that “[t]he jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities”

B. Internal Structure

1. Commissioners

- a. PSC is composed of three persons appointed by Governor with the advice and consent of the Senate. May be removed for cause by the Governor.
- b. Each must be resident and qualified voter of the state and must have resided in the state at least 3 years prior to appointment.
- c. No more than 2 members of commission may be of the same occupation or profession.
- d. Actual decision makers
- e. Act through their written Orders. Bee's Old Reliable Shows, Inc. v. Kentucky Power Co., Ky., 334 S.W.2d 765 (1960).

2. Executive Director (KRS 278.100).

- a. The PSC's chief administrative officer.

b. Must have “experience and training demonstrating the capacity to deal with the problems of management and governmental regulation and knowledge relatable to utility regulation.”

c. Responsible for implementing the programs, directing the staff, and maintaining the official records of PSC proceedings, including all approved orders.

3. Commission Staff

a. Internal Structure

(1) Filings Division. Responsible for Commission records, filings in active cases, annual report filings, and tariffs.

(2) Financial Analysis Division

- (a) Water & Sewer Revenue Requirements Branch
- (b) Water & Sewer Rate Design Branch
- (c) Financial Audits Branch
- (d) Management Audits Branch

(3) Engineering Division

(4) Office of General Counsel

(5) Research Division

b. Role of Staff

(1) Advisors to the Commission in technical areas.

(2) Ensures complete record in commission proceedings. Prepares interrogatories to parties, questions witnesses, and presents testimony.

(3) Analyzes filings and case records.

(4) Commission’s agents to ensure compliance with regulations, rules and orders.

- (a) Audits
- (b) Accounting Reviews
- (c) Cost-of-Service Studies
- (d) Accident Investigations

(e) Complaint Investigations

(5) Technical assistance to utilities and parties to PSC proceedings.

III. PSC'S JURISDICTION

A. Extends only to utility rates and services.

1. What is a "Rate"?

a. KRS 278.010(12) defines "rate" as "any individual or joint **fare, toll, charge, rental, or other compensation for service rendered or to be rendered** by any utility, and any **rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation**, and any schedule or tariff or part of a schedule or tariff thereof."

b. Examples:

(1) Monthly Service Fee

(2) Bad Check Charge

(3) Time for pay

(4) Extension of Service Deposit

(5) Deposits

(6) Any formula used to calculate a rate.

(7) Fees to review proposed subdivision developments or water main extensions.

c. PSC establishes rates and service standards.

2. What is "Service"?

a. KRS 278.010(13) defines "service" as "any **practice or requirement in any way relating to the service of any utility**, including the voltage of electricity, the heat units and pressure of gas, **the purity, pressure, and quantity of water**, and in general the **quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility.**"

- b. Examples of service:
 - (1) Water Quality
 - (2) Water Pressure
 - (3) Water Taste
 - (4) Availability of fire protection service

3. What is a utility?

a. KRS 278.010(3)(d) defines a “utility” as “any person **except a city**, who owns, controls, or operates or manages any facility used or to be used for or in connection with . . . the diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation.”

b. Private Investor Owned Utilities (17).

c. Water Districts (110).

(1) A water district is “a political subdivision.” Louisville Extension Water District v. Diehl Pumping & Supply Co., Ky., 246 S.W.2d 586 (1952). Water “districts are political subdivisions of county government.” Public Service Com'n of Kentucky v. Dewitt Water Dist., Ky., 720 S.W.2d 725, 731 (1986). “[A] water district is a type of special district which constitutes a political subdivision of the commonwealth.” Davis v. Powell's Valley Water Dist., Ky.App., 920 S.W.2d 75, 78 (1995).

(2) “‘Special district’ means any agency, authority, or political subdivision of the state which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, or a school district.” KRS 65.005.

d. Water Associations (22).

(1) Non-profit corporation organized pursuant to KRS Chapter 273.

(2) Member owned/Member controlled.

(3) Differs from water district.

(a) Not a governmental entity.

(b) Shareholders rights/enforcement mechanisms.

(c) No political controls. Not a governmental entity, therefore no accountability to public officials. (Members elect water association officials, not appointed by elected officials).

e. Municipal Utilities who provide wholesale utility service to public utilities (84).

f. Excluded Entities:

(1) Municipal Utilities (except wholesale operations).

(2) Sanitation Districts created pursuant to KRS Chapter 220.

(3) Joint Source Water Commissions.

(4) Metropolitan Sewer Districts.

(5) Joint Sewer Agencies.

B. PSC also has the authority and statutory duty to enforce the provisions of KRS Chapter 278.

C. PSC's jurisdiction is exclusive.

1. Courts may only review the PSC's Orders on such issues. They may not address issues related to rates and service directly.

2. Complaints regarding a utility's rates or service must first be brought to the PSC. KRS 278.260(1).

3. Cities or other governmental entities may not restrict that jurisdiction or attempt to impose their own requirements that conflict with PSC's jurisdiction.

D. PSC's jurisdiction is solely regulatory.

1. It does not have the authority to award damages. See Carr v. Cincinnati Bell, Inc., Ky.App., 651 S.W.2d 126 (1983).

2. It merely regulates rates and service; it does not manage the utility.

IV. PSC'S POWERS TO REGULATE RATES

A. Certificates of Public Convenience and Necessity

1. General Rule: "No person shall begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except . . . ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction." KRS 278.020(1).

2. Purpose of Rule

- a. Ensure that unneeded facilities are not built. Such construction will needlessly increase utility rates.
- b. Ensure the facilities will meet performance standards and deliver quality service.
- c. Economic coordination – avoid excess capacity and overproduction within a regional area.
- d. Technical feasibility – ensure the proposed facilities will work.

B. Filed Rate Doctrine

1. KRS 278.160(2):

No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

2. Commission Regulations:

- a. 807 KAR 5:011, Section 3(5)(a) provides that "[a]ll the rules and administrative regulations of the utility must be in utility's tariff."

b. 807 KAR 5:006, Section 5(1) states: “No utility shall establish any special rule or requirement without first obtaining the approval of the commission on proper application.”

c. 807 KAR 5:006, Section 5(2) states: “A customer who has complied with commission administrative regulations shall not be denied service for failure to comply with the utility's rules which have not been made effective in the manner prescribed by the commission.”

3. Purpose Behind The Rule

a. Ensures PSC review of rates/rules. If the rate is not on file with the PSC, the PSC has never had an opportunity to review and ensure that the rate/rule is reasonable. Presumption that all filed rates are reasonable and lawful. The rule has been described as the “bedrock of utility rate regulation.”

b. Prevent Discrimination. If utility can charge only the filed rate, then the ability to discriminate against similarly situated customers is eliminated. All customers must be charged the same rate.

4. Failure to comply will result in refund of all non-filed rates collected.

C. Rate Adjustments

1. Utility may only change its rate by providing PSC with 30 days’ notice of its proposed change. KRS 278.180. PSC may, prior to the effective date of proposed change, suspend the rate and investigate the reasonableness of the proposed rate. KRS 278.190(3). PSC has 10 months from the filing of the proposed rate to determine its reasonableness.

2. In any investigation of the proposed rate, the burden of proof is upon the utility seeking the adjustment to demonstrate the reasonableness of the proposed rate.

D. Financing

1. KRS 278.300 provides that “[n]o utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission.”

2. All long-term financing must be approved by the PSC. Long-term financing consists of any financing in excess of two years or renewals of two-year notes for period exceeding six years.

3. Purpose: Ensure that borrowing is for proper purpose and will not threaten the financial integrity of utility.

4. If the utility fails to obtain PSC authorization, it may be subject to penalty. Moreover, if the unauthorized debt is not for a proper purpose, then the costs of servicing the debt will not be recovered through rates.

E. Service

1. PSC “shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by the utility.” KRS 278.280(2).

2. If after reasonable notice and hearing, the PSC finds “that the rules, regulations, practices, equipment, appliances, facilities or service of any utility subject to its jurisdiction, or the method of manufacture, distribution, transmission, storage or supply employed by such utility, are unjust, unreasonable, unsafe, improper, inadequate or insufficient,” the PSC may shall determine the reasonable and proper “rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed,” and require the utility to follow such rules. KRS 278.280(1).

3. Example: Administrative Regulation 807 KAR 5:066.

F. Authority to Assess Penalties - KRS 278.990(1).

G. Monitoring Capabilities

1. Access to Records. KRS 278.230 provides that PSC may enter utility premises to inspect and examine records and that utility shall make such records available for inspection and examination.

2. Financial Audits – KRS 278.250.

3. Required Reports. KRS 278.230(3) provides that “[e]very utility, when required by the commission, shall file with it any reports, schedules, classifications or other information that the commission reasonably requires.

4. Subpoena Powers – KRS 278.320.

5. Management and Operations Audits - KRS 278.255.

6. Informal investigations – KRS 278.250.
 7. Customer complaints – KRS 278.260.
- H. Other Statutory Powers Related to the Regulation of Rates.
1. Establish uniform system of accounts – KRS 278.220.
 2. Require the merger of water districts and/or water associations – KRS 74.361.
 3. Remove for cause water district commissioners/directors of water associations – KRS 74.455.

V. RATE-MAKING: AN OVERVIEW

- A. Generally: Three-Step Process
- B. First Step: Determine Revenue Requirements
 1. Utility is permitted to recover through its rates sufficient revenues to meet its reasonable operating expenses and provide for a reasonable rate of return.

TOTAL REVENUES = REASONABLE OPERATING EXPENSES + REASONABLE RETURN ON INVESTMENT

2. Test period of operations selected.
3. Expenses during that period are examined to determine if properly accounted and if they are normally occurring. Non-recurring expenses are removed. Extraordinary expenses are adjusted.
4. Expenses are adjusted to reflect known and measurable changes. (For example, wage and salary increases, insurance premium adjustments, price changes in supplier contracts).
5. Reasonable return on investment is calculated. May be based upon cost of debt (debt-intensive entity) or rate of return on investment (investor-owned entity) or combination.
 - a. Debt-based Utility.
 - (1) Determine debt service requirements.
 - (2) Ascertain appropriate level of cash flow (e.g. 1.25X DSC).
 - b. Equity-based Utility.

- (1) Determine the level of rate base.
- (2) Determine the appropriate rate of return.
- (3) Apply rate of return to rate base to arrive at return on investment.

6. Add Operating Expenses and ROI to obtain Total Revenue Requirement.

C. Second Step: Determine Cost-of-Service. Expenses are functionalized and assigned to each customer class.

D. Third Step: Design Rates

VI. SUMMARY